

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1878 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHAGWATILAL DHURILAL MEGHIWAL

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner herein challenges the order of preventive detention dated 3rd November, 1998 made by the Commissioner of Police, Ahmedabad City, under the powers conferred upon him under Sub-section 2 of Section 3 of

the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a habitual offender, and therefore, 'a dangerous person' within the meaning of Section 2 (c) of the Act and his activities are found to be prejudicial to the maintenance of public order. As many as 3 offences punishable under Chapter XVII of the Indian Penal Code, have been registered against the petitioner. Besides, two witnesses have given statements in respect of the nefarious activities being carried on by the petitioner, and its adverse effect on the public tranquillity and the even tempo of life.

4. It is contended that all the offences registered against the petitioner are directed against an individual and the same cannot affect the public tranquillity or the even tempo of life. The question of breach of public order, therefore, should not arise. Further, the last of the offences has been registered as far back as on 17th February, 1998, the impugned order has been made months thereafter on 3rd November, 1998. Moreover, the statements of the witnesses also were recorded on 1st November, 1998; just two days before the order of detention. Apparently, this leaves no time to the concerned officer to verify the genuineness of the statements made by the witnesses. The privilege claimed under Section 9 (2) of the Act is, therefore, vitiated.

5. I have perused the FIRs lodged in the above referred offences and the statements made by the witnesses. The offences registered against the petitioner all relate to cases of theft. There is nothing in the FIR which should have an adverse effect on the public tranquillity or the even tempo of life. Besides, the incidents narrated by the witnesses also relate to the crime against the individual which can have no affect on the even tempo of life. I am, therefore, of the view that neither of the incidents can be said to have adverse effect to the public order. Further, even the credibility of the witnesses and the genuineness of the statements made by them have not been examined. No subjective satisfaction has been recorded by the detaining authority in respect of the genuineness of the statements made by the witnesses and their credibility. In absence of such satisfaction recorded by the detaining authority, the order of detention is vitiated.

6. Petition is, therefore, allowed. The impugned order dated 3rd November, 1998; Annexure-A to the

petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

Prakash*